

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 22-22538-CIV-RKA

DOMINIK KARNAS, ET AL.,	.
	. Miami, Florida
Plaintiffs,	.
	. May 6, 2024
v.	. 3:11 p.m.
	.
MARK CUBAN, ET AL.,	.
	.
Defendants.	.
.

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Transcript of Zoom Status Conference had
before the Honorable Roy K. Altman,
United States District Judge.
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Proceedings recorded by mechanical stenography, transcript
produced by computer.

APPEARANCES:

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Court Reporter: Francine C. Salopek, RMR, CRR
Official Court Reporter
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400 N. Miami Avenue, Room 12-4
Miami, Florida 33128
(305) 301-3276

ALSO PRESENT: Alex Wittenberg (present on Zoom)
Law360

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MONDAY, MAY 6, 2024, 3:11 P.M.

(The Judge is presently on the bench)

THE COURT: All right. Calling the last case of the day, Karnas vs. Cuban, et al., 22-CV-22538.

Who's here for the plaintiff?

MR. MOSKOWITZ: Good afternoon, Your Honor. Adam Moskowitz on behalf of the plaintiffs.

THE COURT: Good afternoon.

MR. ZACK: Stephen Zack on behalf of the plaintiff.

THE COURT: Good afternoon.

MR. KAYE: Joey Kaye, Moskowitz Law Firm, on behalf of the plaintiff.

THE COURT REPORTER: I can't hear you, sir.

THE COURT: Just pull it close to you.

MR. KAYE: Joey Kaye from The Moskowitz Law Firm on behalf of the plaintiffs.

THE COURT: Good afternoon.

MR. BUSHMAN: Good afternoon, Your Honor. Howard Bushman for the plaintiffs.

THE COURT: Good afternoon.

MR. FERRER: Good afternoon, your Honor. Jose Ferrer and Desiree Fernandez on behalf of the plaintiffs.

THE COURT: Good afternoon.

MR. BEST: Good afternoon, Your Honor. Stephen Best on behalf of the defendants.

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1 THE COURT: Good afternoon.

2 MR. HUCK: Good afternoon, Your Honor. Paul
3 Huck, Jr., on behalf of the defendants.

4 THE COURT: Good afternoon.

5 MS. WOLKINSON: Good afternoon, Your Honor. Rachel
6 Wolkinson on behalf of defendants.

7 THE COURT: Good afternoon.

8 MR. KNIGHT: Good afternoon, Your Honor. Christopher
9 Knight on behalf of the defendants.

10 THE COURT: Good afternoon, sir. And you've been
11 stalking me on airplanes. That's what the U.S. marshals think.

12 MR. KNIGHT: You are correct.

13 MR. TURNER: Good afternoon, Your Honor. Barry Turner
14 on behalf of Victor Oladipo.

15 THE COURT: Good afternoon.

16 MS. TIFFORD: Alexandra Tifford on behalf of the
17 defendants.

18 THE COURT: All right. Good afternoon.

19 We set this hearing both to hear arguments on two
20 pending motions -- one, the plaintiffs' motion for
21 reconsideration of the order granting the defendants' renewed
22 motion for leave to file under seal, what I'll call the motion
23 for reconsideration, at ECF Number 269; and, two, the
24 plaintiffs' motion for leave to file an unredacted reply in
25 support of class certification -- that's ECF Number 277 -- and

1 in response to the parties' request for a status conference.
2 That joint motion for status conference was at ECF Number 274.

3 I'll begin by considering the plaintiffs' motions.

4 First, the motion for reconsideration and the motion
5 for leave. Pending before us now are the plaintiffs' motion
6 for reconsideration and the plaintiffs' motion for leave to
7 file an unredacted reply.

8 On April the 22nd of last year, we granted -- no -- of
9 this year, we granted the defendants' renewed motion for leave
10 to file under seal -- that was ECF Number 262 -- allowing them
11 to fully or partially redact two exhibits referenced in their
12 response in opposition to the plaintiffs' motion for class
13 certification, which was ECF Number 265. Our order was at 263.
14 Those exhibits are, one, the sponsorship agreement, ECF
15 Number 265-26, which the defendants sought to seal in full;
16 and, two, the email exhibit, ECF Number 265-43, which is only
17 partially redacted.

18 Although we originally characterized that motion as
19 unopposed -- that's our order at page 1 -- the plaintiffs have
20 since clarified that their consent extended only to the
21 defendants' public filing of some exhibits they initially
22 sought to file under seal. And that's their motion for
23 reconsideration at 6, stating that the plaintiffs "would not
24 object to any of plaintiffs' documents being filed publicly."

25 Because the plaintiffs were unable to engage in the

1 adversarial process through a response to the defendants'
2 renewed motion, the interests of justice, I think, require that
3 the plaintiffs now have an opportunity to be heard on this
4 issue. See, for example, *Prudential vs. Emerson*,
5 919 F.Supp. 415, at 417, a Middle District of Florida case by
6 Judge Kovachevich, citing *American Home Assurance Company*,
7 763 F.2d at 1293 (*sic*), Footnote 2.

8 The plaintiffs also want to publicly file their reply
9 brief, which includes a redacted reference to the deposition of
10 Billy Phillips, at ECF Number 276-1, a confidential document
11 pursuant to the "stipulated protective order," which is the
12 reply, ECF Number 276, at 1, Footnote 2.

13 On May 5th, just yesterday, the parties submitted, as
14 I required them to do, a joint status report, at ECF
15 Number 280, informing the Court that they have agreed on
16 proposed redactions to the email exhibit. That's the JSR at
17 page 1. The parties have also agreed to certain disclosures in
18 the sponsorship agreement but remain in dispute about most of
19 its passages. And the parties couldn't agree on whether the
20 plaintiffs may publicly disclose in their reply the "specific
21 amount of commission that Mavericks' employees received in
22 connection with the Voyager Sponsorship Agreement." That's the
23 joint status report, ECF Number 280, at pages 2 to 3. See also
24 the Commission email, ECF Number 280-2 (highlighting the
25 disputed language).

1 We'll start with the Sponsorship Agreement. According
2 to the defendants, the Sponsorship Agreement must be redacted
3 because "it contains proprietary and competitive business and
4 pricing information, the disclosure of which would harm the
5 Mavericks' competitive position." That's the renewed motion at
6 2.

7 I recognize that courts have allowed the redaction of
8 similar documents that contained "a confidentiality provision,
9 reflect business decisions, and include competitively sensitive
10 and detailed pricing information on the company's products."
11 That's the defendants' renewed motion at page 4, quoting, for
12 example, *Declan Flight, Inc. vs. Textron Eaviation, Inc.*,
13 2023 WL 4847575, at page 2, a Middle District of Florida
14 decision from Magistrate Judge Lammens. See also *Pinnacle*
15 *Towers vs. Airpowered*, 2015 WL 5897524, at page 1 to 2, a
16 Middle District of Florida case from 2015, also Magistrate
17 Judge Lammens. It's for that reason that we were willing to
18 take the defendants at their word about the sensitivity of the
19 redacted information -- that's my order at page 2 -- finding
20 good cause based on the defendants' representation.

21 Having now reviewed the documents, though, I don't
22 think these redactions were necessary. As the plaintiffs point
23 out, "the Sponsorship Agreement's confidentiality provision
24 specifically stated it would only survive at most a year beyond
25 its termination, which in this case is a year after July the

1 5th, 2022." That's the motion for reconsideration at page 10.
2 The defendants didn't tell us of that fact when they sought
3 leave to file the Sponsorship Agreement under seal. And as the
4 Sponsorship Agreement, including the price term, is no
5 longer -- doesn't appear to be confidential by its own terms,
6 this isn't the type of case where a document must be sealed to
7 protect the business from "competitors viewing confidential
8 business information." That's *Pinnacle Towers*, the case the
9 defendants cited, at pages 1 to 2.

10 It also means that the price terms as redacted in the
11 email exhibit and in the plaintiffs' reply also aren't really
12 confidential. Because the defendants themselves, in entering
13 into the agreement, didn't "anticipate a long-term need to
14 protect any of this information," we're skeptical that whatever
15 interest the defendants still have in keeping the information
16 confidential outweighs the public's presumptive common-law
17 right to inspect and copy judicial records, as identified in,
18 for example, *United States vs. Rosenthal*, 763 F.2d 1291, at
19 1292 to '93, an Eleventh Circuit case from 1985.

20 So I'll ask the defendants, then, how it is that the
21 defendants' proposed redactions are so important when by its
22 own terms the document seems to suggest that they could become
23 public within a year after the termination of the agreement,
24 which has already expired more than one year ago?

25 MR. HUCK: Your Honor, thank you for the opportunity,

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1 and I will address that specific question.

2 I do want to raise an issue, though, that
3 Mr. Moskowitz had raised with us yesterday, and that is that
4 some members of the press had expressed interest of attending
5 this hearing, and to the extent we're going to be discussing
6 information --

7 THE COURT: Is there anybody --

8 *(Woman raised her hand)*

9 THE COURT: Welcome to the courtroom. What an irony
10 that you're to be removed in a question about public access.

11 UNIDENTIFIED WOMAN: That's why I'm here.

12 THE COURT: If you wouldn't mind, just until I rule,
13 we'll bring you back in. Okay, ma'am?

14 UNIDENTIFIED WOMAN: Yes, sir.

15 *(The unidentified woman exited the courtroom)*

16 *(The following proceedings were ordered sealed by the*
17 *Court:)*

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1 *(The foregoing proceedings were ordered sealed by the*
2 *Court)*

3 *(Unidentified woman entered the courtroom)*

4 THE COURT: Welcome back, ma'am.

5 UNIDENTIFIED WOMAN: Thank you.

6 THE COURT: All right. The courtroom is now unsealed.
7 Go ahead, sir.

8 MR. BEST: Thank you.

9 So where we're at is, given the posture of this case
10 and the arguments that have been made on class certification,
11 the arguments actually for class certification by the
12 plaintiffs state in specificity that the data is necessary for
13 their efforts for determination of damages going forward.
14 We're looking at it from a determination of causation before we
15 even get to damages. But we both agree that that data is
16 critical to the advancement of this case.

17 THE COURT: So what are you asking me for?

18 MR. BEST: I'm asking, Your Honor, respectfully, to
19 stay discovery for three months or continue and push all the
20 deadlines, however you want to frame it, so that we can get
21 the --

22 THE COURT: So the clock's not working against you.

23 MR. BEST: Yes, Your Honor.

24 THE COURT: Now, if I stay discovery, are they going
25 to stop working on that, or no?

1 MR. BEST: No, Your Honor.

2 THE COURT: Okay.

3 MR. BEST: They know --

4 THE COURT: I don't have a problem with that.

5 Any objection to that?

6 MR. MOSCOWITZ: Well, we do, Your Honor, just because
7 we don't see what the need is now. And I agree with Steve,
8 we're trying to move everything quickly. We have a motion to
9 dismiss that's fully briefed. We're waiting for a ruling. We
10 have a motion for class cert. that's fully briefed. We're
11 waiting a ruling on that. So I don't know the final numbers of
12 what Voyager bankruptcy people get at the end of the day. That
13 shouldn't have a bearing on the motion to dismiss or the motion
14 for class cert. So I don't know what else needs to be done.

15 THE COURT: Well, because he's saying that there are
16 deadlines that are going to come up. The reality is, the way
17 these things work is, right now, on that side of the docket,
18 we're on a First Amendment trial, writing the order on that
19 case, which is going to be probably a hundred pages. Okay?
20 Then after that is a constitutional takings case at summary
21 judgment that is pending longer than yours. So that's -- and
22 you're probably third on the list.

23 So whether that's going to happen in the next month or
24 two months -- I mean, those two orders that are in front of you
25 are huge orders. Both constitutional cases, one after a full

1 bench trial -- which I hate bench trials for that reason, let
2 the jurors decide -- but I'm deciding, so that's happening.
3 And then summary judgment on another constitutional takings
4 issue. And so those are going to be two very long orders that
5 have to come out before I get to your order.

6 And his point is that you're going to want that stuff
7 at some point, and there's, I guess, a discovery deadline
8 that's --

9 MR. BEST: July 8th.

10 THE COURT: -- July 8th, and today is May 6, so I may
11 not rule on your motion until something like mid-July, in which
12 case your discovery deadline will have expired before you've
13 been able to get all your stuff that you need. And that
14 doesn't work for you or it doesn't work for him. That's what
15 it sounds like. So I'm happy to work with you guys on whatever
16 makes sense.

17 I noticed in your motion on this issue that you said
18 you were interested in having the status conference so you
19 could find out his position. I'm not sure if you've had a
20 chance to discuss a way of resolving this. I'm fine with
21 either, staying the discovery period for three months, if
22 that's what you think you need, so that you can get all this
23 stuff without having been prejudiced by an impending deadline,
24 but I'm open to other suggestions.

25 MR. MOSCOWITZ: I would just ask, let us try to talk.

1 We haven't talked about it yet, so just give us until the end
2 of the week, and we'll try to come up with something that's
3 amicable between both of us.

4 THE COURT: I don't have a problem with that. Why
5 don't you, on Friday, when you submit your status report on
6 whether you're going to object to the motion for the
7 certification of the settlement class and the settlement
8 itself, that you discuss with him this question, and you let me
9 know in that notice what you guys agree to, or, if not, I'll
10 just rule on it.

11 MR. BEST: Of course.

12 THE COURT: All right? So that will be by this
13 Friday.

14 And then by the 13th, which is next week, you'll
15 submit to me your ten pages each on where we are with
16 termination of this agreement.

17 Yeah. But there are the redactions to the -- or the
18 proposed redactions to the email exhibit that you have agreed
19 to. And so at the very least, those should be submitted.
20 Correct?

21 MR. MOSCOWITZ: Yes, Your Honor.

22 THE COURT: All right.

23 MR. BEST: And we have made substantial unredactions
24 of the Sponsorship Agreement, which, irrespective of how Your
25 Honor rules, we're okay with. So we've taken, also, the AEO

1 label off of the body of the Sponsorship Agreement.

2 THE COURT: So do you want to refile all those with at
3 least the agreed-to unredactions in both documents, so at least
4 that's in the public sphere for now, or do you want to wait
5 until I rule once and for all? What do you prefer?

6 Mr. Moskowitz?

7 MR. MOSCOWITZ: It doesn't matter to us.

8 MR. BEST: Whatever Your Honor's preference.

9 THE COURT: All right. Why don't you refile it now
10 with the unredactions, so that at least it's in the public
11 sphere so far as it's agreed to. And then after you've
12 submitted your briefing on the question of termination, I'll
13 rule on it, and then we could either refile -- leave as is, if
14 I deny the motion for reconsideration, or refile again if I
15 grant it.

16 Yes, sir.

17 MR. BEST: Thank you very much.

18 THE COURT: Anything else then from the plaintiffs?

19 MR. MOSCOWITZ: No, Your Honor.

20 THE COURT: Anything else from the defendants?

21 MR. BEST: No, Your Honor.

22 THE COURT: All right, folks. Nice to see you all.

23 Mr. Zack, nice to see you, sir.

24 Have a good day, everyone.

25 MR. MOSCOWITZ: Thank you.

MR. BEST: Thank you, Your Honor.

(The Judge exited the courtroom)

(Proceedings concluded at 3:52 p.m.)

— — — — —

C E R T I F I C A T E

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript from the record of proceedings in the
above-entitled matter.

/s/Francine C. Salopek	5-6-2024
Francine C. Salopek, RMR-CRR	Date
Official Court Reporter	

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